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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510-511

IN THE MATTER OF

CHICAGO RAILWAYS COMPANY, ET AL.,

DEBTORS.

CHICAGO TRANSIT AUTHORITY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND JOHN E. SULLIVAN, LIQUIDATING TRUSTEE, ETC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The matter involved here is an order of the United States Court of Appeals for the Seventh Circuit entered on November 18, 1949 (R. 111), affirming in substance an order of the United States District Court for the Northern

District of Illinois, Eastern Division, entered on February 24, 1949 (R. 85). This order held that the statutory tax exemption which had been granted to Chicago Transit Authority, a municipal corporation, was not available with respect to any part of the 1947 personal property taxes assessed against properties owned by the Chicago Surface Lines for part of the year but acquired by Chicago Transit Authority on September 30, 1947.

The question is whether the tax exemption can be applied for part of a year.

This petition is probably the final chapter in the reorganization of Chicago Surface Lines and Chicago Rapid Transit Company. Other questions in that reorganization were before this Court on two previous occasions, involving petitions for certiorari. The previous petitions related to the later stages of the reorganization just prior to petitioner's acquisition of the properties of the bankrupt Chicago Surface Lines and Chicago Rapid Transit Company. In the first petition certain Chicago Railways Company bondholders and others, sought to review the Court of Appeals' order upholding the plan of reorganization which had excluded them from participation, 160 F. (2d) 59, 67 (cert. denied 331 U. S. 808). In the second certain bondholders sought review of the dismissal of an appeal which had attempted to modify the order of sale (cert. denied, 333 U. S. 828).

If this Court had on either of those occasions sustained the purely harassing technical objections of those minor bondholder groups, the long sought public ownership of Chicago's major local transportation systems would have been thwarted. The plan, however, was consummated on September 30, 1947, when Chicago Transit Authority by purchase acquired the properties. This was the culmination of more than twenty years of constant planning and litigation, involving seemingly insuperable obstacles, dur-

ing which five prior major attempts at reorganization had ended in failure.

The public importance of this petition becomes apparent, involving as it does one of the important questions likely to arise in every effort at public ownership of local transportation facilities. Other cities are already well advanced in their plans for the creation of similar authorities for public ownership. It is inevitable that the precise tax exemption question involved herein, which has never before been presented to this Court, will arise repeatedly as public ownership of local transportation systems spreads throughout the country. And the question will often arise in the federal courts, which are frequently the conduit leading to such ownership.

It is imperative that this Court now settle this question of rather large public importance. Not only does a decision of the question occupy a relatively important place in every similar attempt at public ownership, but it will also have a not insignificant effect on petitioner's financial condition, as it involves over four hundred thousand dollars.

The decision of the Court of Appeals has neither followed Illinois law nor the law of any other state. In Illinois the precise question has not been adjudicated; in every other state where it has arisen the position corresponding to that of petitioner here has been upheld. Moreover, the decision conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (1942) (C. C. A. 3).

The taxes were assessed by the State of Illinois against the trustees in bankruptcy for Chicago Surface Lines, who controlled and operated the properties on April 1, 1947, the so-called assessment day in Illinois. The State filed its claim for the entire year's taxes in the reorganization proceedings in the district court, and petitioner, as

purchaser of the assessed properties, was permitted to intervene and file its Answer and Objections.

If the claim of the State is allowed in full, petitioner, a tax exempt municipal corporation, will be forced to pay an amount exceeding $405,000 representing taxes for the last three months of 1947, because under the Plan of Reorganization (R. 18), it is obliged to indemnify the Trustees against the liability for taxes beyond September 30, 1947, the date of transfer of the properties.

The State filed a motion to strike petitioner's answer which was allowed by the district court in the order from which the appeal was taken, the district court holding that because petitioner was not the owner of the personal properties on April 1, 1947, the properties were subject to taxation for the entire year 1947. On appeal, this order was affirmed by the Court of Appeals and Chicago Transit Authority is herein seeking review by certiorari.

Petitioner is a municipal corporation and political subdivision of the State of Illinois created by the Metropolitan Transit Authority Act, approved April 12, 1945, (Ill. Rev. Stats. 1947, Ch. 111⅔, Par. 300 *et seq.*), as a nonprofit, self-supporting public body to take over the properties and operations of the Chicago Surface Lines and the elevated railroad system of Chicago Rapid Transit Company and to furnish a modern, efficient, comprehensive local transportation system for the metropolitan area of Chicago. The Act further provides that it is to have no taxing power whatsoever, and that its income is to be derived solely from revenues. Its expenditures are limited to certain purposes specified in the Act, but none of such purposes is the payment of general property taxes. It is not disputed that Chicago Transit Authority has a statutory tax exemption (Ill. Rev. Stats., 1947, Ch. 120, Par. 500, sub. par. 13). The legality of the exemption has been

upheld (*People* v. *Chicago Transit Authority*, 392 Ill. 77, 94).

The pro rata abatement of taxes when a municipal corporation acquires property after assessment day has never been decided in Illinois. In the jurisdictions where the precise question presented by the facts in this case has been litigated, it has been held, without exception, that the tax exemption of a public body, as distinguished from that of a charitable, educational or religious institution, is effective for at least its period of holding during the year. The reasoning of those decisions (which make the distinction last mentioned) applies to Illinois with like force. The Court of Appeals has failed to follow the local law—and the writ should be granted.

II.

JURISDICTIONAL STATEMENT.

The decision sought to be reviewed is that of the United States Court of Appeals for the 7th Circuit, entered on November 18, 1949. The jurisdiction of this court is invoked under Title 28, U. S. Code, Section 1254 (Judicial Code, Section 1254).

III.

THE QUESTIONS PRESENTED.

1. Can a tax exempt municipal corporation and political subdivision of the State of Illinois be held liable for taxes either directly or indirectly?

2. Should petitioner's statutory exemption from taxes be given effect for the last quarter of the year 1947 during which period it owned and operated the assessed properties for public purposes?

3. Can petitioner, a tax exempt municipal corporation, be held liable for personal property taxes for that part of the year during which it owned and used the personal property for public purposes?

4. Did the Court of Appeals err in disregarding the fact that under the statute in Illinois the 1947 personal property taxes did not become a lien on the properties until many months after petitioner had acquired them for public purposes, thereby failing to follow the rule prescribed by the Court of Appeals for the Third Circuit and by many State courts that the correct test as to whether taxes can be apportioned is whether the tax was a lien on the property at the time title vested in the public body?

5. Did the Court of Appeals also err in disregarding the even broader general rule adopted by all other courts that have ever considered the question, that the tax exemption of a municipal corporation, unlike that of a charitable, religious or educational corporation, is effective immediately upon its acquisition of the property, regardless of whether a lien had previously attached, and that all proceedings thereafter to assess, collect or enforce

taxes, either directly or indirectly, applicable to its period of holding are void?

6. What is the effect of Chicago Transit Authority's tax exemption on the State's claim for 1947 personal property taxes which nominally were assessed against the Trustee?

7. Did the Court of Appeals err in holding as controlling the Illinois cases relied on by the State, none of which involved a municipal corporation or personal property taxes, but only educational and religious institutions and real property taxes which had attached as statutory liens on the respective properties before they were acquired by the various institutions?

8. Does the statute in Illinois, which provides that the owner of property on April 1st shall be liable for the taxes of that year, subject property privately owned on April first to taxes for the full year regardless of whether a tax exempt public body thereafter acquires it for public purposes, or is it not the primary intent of this statute to fix the tax liability to the State as between successive private owners?

9. Did the Court of Appeals err in holding that the intent of the tax proration provisions of the Plan of Reorganization was to burden petitioner, the tax exempt purchaser of the properties, with a portion of the year's taxes, or should it have held that the said provision intended that indemnification of the Trustee against taxes after the date of transfer would be accomplished by giving effect to the tax exemption of the purchaser, which was mentioned in that very provision?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The decision of the Court of Appeals involves a question of considerable public importance affecting the municipal acquisition and operation of a public transportation system. It has a probable involvement in the possible acquisition and operation of public transportation systems by other municipal corporations in the future. If undisturbed, it will impose a substantial tax burden upon petitioner.

2. The decision of the Court of Appeals has neither followed the law of Illinois nor of any other state. It also conflicts with the rule announced by the Court of Appeals for the Third Circuit.

3. The Court of Appeals ignored the law of the land which has universally recognized the distinction between the tax exemption status of a municipal corporation and that of a charitable, educational or religious institution; the exemption of a municipal corporation is effective immediately upon its acquisition of the property, and all proceedings thereafter to assess, collect or enforce taxes, either directly or indirectly, applicable to its period of holding are void.

V.

PRAYER.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court a full and complete transcript of the record of the proceedings of the said Court of Appeals had in case numbered and entitled on its docket, Nos. 9892, 9893, In the Matter of Chicago Railways Company, *et al.*, Debtors, Chicago Transit Authority, Intervenor-Appellant, *vs.* People of the State of Illinois and John E. Sullivan, Liquidating Trustee, Etc., Appellees; to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that judgment herein of said Court of Appeals be reversed by the court, and for such further relief as to this court may seem proper.

Respectfully submitted,

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December, 1949.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the District Court is set forth in the record at page 85. It is not reported.

The opinion of the Court of Appeals is set forth in the record at page 111. It is not yet reported.

JURISDICTION AND STATEMENT.

The basis of jurisdiction and the statement of the case have been set forth above in the petition (pp. 1-5).

SPECIFICATION OF ERRORS.

1. The Court of Appeals erred in affirming in substance the judgment of the District Court striking petitioner's Answer and Objections.

2. The Court of Appeals erred in not abating that part of the State's claim for 1947 personal property taxes applicable to petitioner's period of holding during the year.

3. The Court of Appeals erred in ignoring the universal rule that the tax exemption of a municipal corporation, unlike that of a charitable, educational or religious institution, becomes immediately effective upon its acquisition of the property, particularly where there is no lien.

4. The Court of Appeals erred in holding as controlling on the question of apportionment, *People* v. *Deutsche Gemeinde,* 249 Ill. 132, and other Illinois cases involving religious and educational institutions and not municipal corporations, and wherein also the statutory lien for real estate taxes had attached prior to acquisition of the properties by the various institutions.

5. The Court of Appeals erred in holding that purchase of the assessed properties on September 30, 1947 by petitioner, a tax exempt municipal corporation, did not affect in any way the State's right to recover taxes for the full year 1947.

6. The Court of Appeals erred in holding as immaterial the fact that no lien had attached to the assessed properties at the time they were acquired by petitioner.

7. The effect of the decision of the Court of Appeals is to impose a tax on a tax exempt political subdivision of the State of Illinois in violation of the manifest intent of the state statute by the device of calling the taxes a purchase price adjustment.

SUMMARY OF ARGUMENT.

This case presents compelling reasons for certiorari.

The Court of Appeals has not followed the local law. Its decision is inconsistent with every authoritative holding and conflicts with the undoubted inferences to be drawn from the Illinois cases (where the exact question has not been adjudicated). It also conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (C. C. A. 3, 1942).

The Court of Appeals based its decision on *People* v. *Deutsche Gemeinde*, 249 Ill. 132, and other Illinois cases which are not in point. The question here presented involves the tax exemption of a municipal corporation which was not in issue nor argued in any of those cases. Those decisions moreover involved real property taxes where a lien had already attached; this case involves personal property taxes where no lien had attached.

ARGUMENT.

I.

The Tax Exemption of a Municipal Corporation Becomes Effective Immediately Upon Its Acquisition of Property.

Certain points are not in dispute:

(1) The petitioner is a municipal corporation and is exempt from taxes (Ill. Rev. Stat. 1947, Ch. 111⅔, Par. 303; *People* v. *Chicago Transit Authority,* 392 Ill. 77, 94; Ill. Rev. Stat. 1947, Ch. 120, par. 500, sub. par. 13).

(2) The petitioner acquired the properties in question on September 30, 1947 (R. 86).

(3) The taxes involved in this case are on personal property (R. 68).

(4) The lien for the taxes in question did not attach to the property prior to April, 1948 (R. 78).

A municipal corporation's tax exemption, when the facts are as here, has been given effect immediately upon its acquisition of property in every jurisdiction where the question has arisen. While the Illinois courts have not decided this question, the great body of law upholds that principle. The Illinois decisions followed by the Court of Appeals involved religious and educational institutions. This rule as to religious and educational institutions has not been applied to a municipal corporation.

Wherever the precise question has arisen, upon facts such as appear in this record, the courts have held, without exception, that when title to private property vests in *a municipal corporation,* its tax exemption is effective for

at least that part of the year during which it owned the property.[1]

City of Harlan v. *Blair,* 251 Ky. 51, 64 S. W. (2d) 434, is remarkably similar to this case. There the City purchased property in August of 1932, (but the taxes had already become a lien). It received money from the seller to pay taxes up to the date of sale. The city paid that portion of the taxes and then sued to enjoin collection of that part of the taxes proportional to the part of the year it held the property. The Court granted the injunction, saying:

> "In view of the applicable rule announced in these cited cases, and the reasoning supporting it, we are of the opinion that the appellant's water plant was, upon its purchase or acquisition by the city, a public property, operated for its municipal use; that it then became tax exempt, and the city was thereby relieved from liability for the payment of such prior lien tax, or in the instant case, of the proportional part of the state and county tax lien on the plant for the year 1932 as might be found ratably due for the period of August 20 to December 31, 1932, covered by appellant's ownership and possession thereof, no other portion of such 1932 tax lien being here involved or in controversy."

In *City of Laurel* v. *Weems,* 100 Miss. 335, 50 So. 561, property was conveyed to the city on March 20, 1906. A Mississippi statute provided that taxes were a lien on the property from the first day of February and constituted a liability from that date, although the amount was not

1. *City of Harlan* v. *Blair,* 251 Ky. 51, 64 S. W. (2d) 434; *City of Laurel* v. *Weems,* 100 Miss. 335, 50 So. 561; *Foster* v. *City of Duluth,* 120 Minn. 484, 140 N. W. 129; *City of Portland* v. *Multnomah County,* 135 Ore. 469, 296 P. 48; *State* v. *Reed,* 47 Idaho 131, 272 P. 1008; *State* v. *County of Maricopa,* 38 Ariz. 347, 300 P. 175; *Smith* v. *City of Santa Monica,* 162 Cal. 221, 121 P. 920; *State* v. *Galyon,* 154 Okla. 204, 7 P. (2d) 484; *State* v. *Locke,* 29 N. M. 148, 219 P. 790; *Reid* v. *State,* 74 Ind. 252.

fixed until the levy made the following September. The property was sold for taxes to plaintiff in 1907 and he sued to quiet title. The court distinguished *Baptist Church* v. *McNeal,* 86 Miss. 22, which had refused to recognize a church's proportional exemption (as did the Illinois cases followed by the Court of Appeals), and held the tax sale invalid on the ground that a municipal corporation was involved and its exemption should be given immediate effect despite a pre-existing lien and liability for taxes. The court summed up this ground as follows (p. 338):

> "All exemptions granted from taxation proceed from reasons of public policy, but the public policy involved is not always the same in regard to each exemption granted. The reason why the state exempts the property of religious societies, charitable institutions, schools, colleges, etc., is because of the interest which the public has in the work which these institutions are engaged in and the public good accomplished by them. The exemption of such institution is a mere grace or charity on the part of the state, in recognition of its appreciation of their public usefulness. * * * The exemption of the property of a municipality is founded on the fact that the municipality is a governmental agency of the state, vested by the state with a part of its sovereignty, and employed in aiding the state in matters of government and the execution of its laws."

In *Foster* v. *City of Duluth,* 120 Minn. 484, 140 N. W. 129, the city purchased property in July, 1905, after taxes for that year had been assessed and levied. The taxes were not paid and the land was sold at a tax sale to plaintiff, who brought ejectment against the city. The court held the tax sale invalid on the ground that tax liability ceases when a municipal corporation purchases the property. Here again there was a previous decision of the Supreme Court of Minnesota refusing to recognize a private corporation's proportional exemption under similar circum-

stances (*State* v. *Northwestern Telephone Exchange Co.*, 80 Minn. 17, 82 N. W. 1090).

Referring to that and other cases, the court said:

> "But the cases cited are not authority on the question here, because of the vital fact that this is public property, devoted to a public use, and that the proceedings to enforce payment of the taxes are against the State, or one of its municipal subdivisions. * * * The rule applicable to private property, or to property used for railroad, charitable or quasi public purposes has no force against the State, no application to properties used exclusively for purely public purposes."

These decisions illustrate the universal rule throughout the United States which should be followed in this case. No contrary decisions were cited in the Court of Appeals. The only variation in application of the rule has been in a few cases in which a lien had attached. But as pointed out in the next division hereof, even under that variation petitioner would be exempt for the last three months of 1947.

This Court is asked to give consideration to the fact that in the above cited cases the properties involved were also in the hands of private owners on assessment day and that the courts were confronted with the identical argument relied on by the State of Illinois in this case, to-wit, that the properties were liable for taxes for the entire year because privately owned on assessment day, and that there could, therefore, be no apportionment of taxes. Just as in this case, the private owners were originally liable for the tax involved. But thereafter the municipalities purchased the assessed properties and the exemption was given effect.

In all cases cited the method of collection, or the formal parties to the tax collection procedure, were immaterial.

If the practical effect was to make the municipality liable but for the exemption, the municipality was given the benefit of the exemption.

Here it matters little what method the State has adopted to enforce collection of the 1947 personal property taxes. If the State is successful, petitioner, a tax exempt subdivision of the State, will be compelled to pay one-quarter of the taxes since the trustee is by the plan of reorganization relieved from taxes after the date that title passed to the Authority and the taxes would eventually become a lien on the property acquired.

In the cases cited above, the exemption was given effect without regard to when the tax lien attached. In the next division we cite cases making the exemption effective if, as here, the lien had not yet attached on the date title passed to the municipality.

II.

The Taxes Involved Should be Abated as to the Last Three Months of the Year for the Further Reason That They Were Not a Lien on the Properties at the Time They Were Acquired by Petitioner.

Petitioner acquired the properties on September 30, 1947, and owned them during the last three months of the year. The taxes were not a lien at the time the properties were purchased. This is another reason for giving immediate effect to petitioner's tax exemption.

United States v. *Certain Parcels of Land in Philadelphia,* 130 F. (2d) 782, involved proceedings by the United States condemning land in Philadelphia on March 10, 1941, wherein the city claimed a portion of the purchase price for the real estate taxes assessed against the property. By statute the tax became a lien when assessed, on January 1, 1941, and it was held there could be no apportionment of

the tax for the year. However in that case the Court of Appeals (3 Cir.) stated what it considers the correct rule for the determining whether tax exemptions can be apportioned (p. 73):

> "The correct test as to whether there can be an apportionment, we think, is whether the tax was a lien on the property at the time title vested in the government."

Under that rule the 1947 taxes here should be held void for the last quarter, as under the statute in Illinois the taxes did not become a lien on the properties assessed until the County Clerk delivered the assessment books to the County Collector in April of 1948, several months after title had vested in petitioner. Ill. Rev. Stats. 1947, Chapter 120, Par. 698, provides:

> "The taxes assessed upon personal property, together with all interest that may accrue thereon, shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the Collector."

The same test was applied in *City of Wichita* v. *Anderson,* 119 Kans. 241, 237 P. 1024, and held effective not only to apportion the taxes but to exempt the properties for the entire year. There the City purchased the property on October 13, 1922. In Kansas, property was listed and assessed during March, April and May of each year. By statute the tax did not become a lien on the property until the first day of November. The court stated:

> "• • • it must be held that the property, having been purchased by the city before the taxes became a lien thereon, was thereafter exempt from the taxes of 1922."

In a very recent Nebraska case, *Madison County* v. *School District No. 2,* 148 Neb. 218, 27 N. W. (2d) 172 (1947), the defendant school district acquired title to cer-

tain parcels of land after the day of the levy of the taxes. By statute the taxes did not become a lien on the properties until January first of the following year. The court held the property to be exempt from taxes for the entire year of purchase, stating as the reason therefor:

> "The entire taxing process had not been completed when the defendant secured title."

The Nebraska court cited *City of Wichita* v. *Anderson*, 119 Kans. 241, 237 P. 1024, saying:

> "That court held that the property was exempt, it having been purchased by the governmental subdivision before the taxes became a lien thereon. We agree with the conclusions there reached."

The taxing process was far from completed and no lien had attached to the properties in the instant case at the time title vested in petitioner. In fact, even the assessments for 1947 were not finally completed for 1947 in Cook County until some time in October of that year, when all corrections thereof ordered by the Board of Tax Appeals were made, and the books were delivered to the County Clerk for making extensions and determining the tax rate. None of said taxes were extended by the County Clerk until March, 1948. It is submitted that practically the entire taxation process took place after petitioner acquired the properties on September 30, 1947.

The cases cited under Point I would seem to compel the granting of the exemption as claimed by the petitioner. But even under the variation of the rule as illustrated in the cases cited in this Point II, the exemption clearly should have been given effect.

This considerable and unchallenged body of law was disregarded by the Court of Appeals in its pronunciation of a rule for Illinois.

III.

People v. Deutsche Gemeinde and Other Illinois Cases Held Controlling by the Court of Appeals Are Not in Point for the Reason That None Involved a Municipality and for the Additional Reason That They Involve Real Property Taxes for Which Statutory Liens Had Attached Prior to Their Transfer.

All of the Illinois cases cited by the Court of Appeals, as well as a few additional cited by the State in its brief, deal with religious, educational or charitable corporations. None passes on prorata exemption in favor of a municipality. In view of the constant distinction made by the courts between the former and the latter type of corporations, those Illinois cases are manifestly not in point. Nor is there anything in the statutes of Illinois which indicates an intention to depart from the unbroken trend of decisions in the commonwealths of this nation. Each state has, of course, a so-called "assessment date." But that circumstance did not, in the decided cases, militate against the application of the general rule which upholds the prorata exemption of a municipality for the period of time which it held the property in the first year of acquisition.

City of Chicago v. *McCausland,* 379 Ill. 602, 606, presents strong reasons for believing that the Illinois courts would follow the weight of authority. There the City of Chicago filed condemnation proceedings on February 17, 1926, to acquire certain property for public purposes. Taxes for the years 1927, 1928 and 1929 were levied and assessed against the property involved. Title was not acquired by the City until June 30, 1929. The Supreme Court of Illinois held that title once acquired related back to the inception of the proceedings and had the effect of wiping out the several years' taxes which had

been assessed between the inception of the action and the date of final acquisition of title by the municipality.

Moreover, the cases cited by the Court of Appeals apparently leaned heavily upon the circumstance that the taxes there assessed, which were on real estate, had already become a lien on the property prior to the date of acquisition.

The first of those cases is *People* v. *Deutsche Gemeinde*, 249 Ill. 132, 94 N. E. 162. The court quoted very briefly therefrom, as follows:

> "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation, * * * although the amount of the taxes has not been determined on the first day of April. The *liability to taxation* and the lien for whatever taxes may be levied for that year are fixed on that day."

The full quotation indicating that the prior attachment of a lien was the vital consideration in denying the tax exemption follows:

> "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation *and provides that taxes upon real property, with penalties, interest and costs that shall accrue thereon, shall be a prior and first lien on such real property from and including the first day of April in the year in which the taxes were levied, although the amount of the taxes has not been determined on the first day of April.* The liability to taxation and the lien for whatever taxes may be levied for that year are fixed on that day. * * * There is no language in the statute exempting property from taxation which shows the purpose to give it retrospective operation *by releasing the statutory lien,* and without such operation the property here involved was not exempt from taxes for the year 1909." (Emphasis ours.)

It seems apparent from the full quotation that the Illinois Court's decision was based on the fact that a

statutory lien for real property taxes had attached on April first.

In *The People* v. *Ladies of Loretto,* 246 Ill. 403, 92 N. E. 908, another case relied on by the State involving real property taxes, exemption was denied for the same reason, the Court stating:

> "The lien of the State for taxes of the year 1909 attached to the property on the first day of April of that year when it was subject to taxation, and being charged with the lien it was not relieved therefrom by the fact that the corporation acquired title afterward."

Those two decisions are obviously based upon the reasoning that because the lien had attached the properties could not be held exempt for any part of the year subsequent to the lien date. It is not illogical to infer that had the lien not yet attached, and had the litigant been a municipal corporation, the opposite result would have been reached.

The statute in Illinois providing for real property tax liens (Ill. Rev. Stats. 1947, Ch. 120, par. 697), provides:

> "The taxes upon real property, together with all penalties, interests and costs, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and incumbrances, from and including the first day of April in the year in which taxes are levied * * *."

The matter at hand involves personal property taxes, the statutory lien of which did not attach until some time in April of 1948, more than six months after petitioner had acquired the properties.

IV.

The Writ Should be Allowed Because There is a Conflict Between the Decision of the Court of Appeals in This Case and the Great Mass of Local Law Developed in the States, as Well as a Conflict With the Rule Announced by the Court of Appeals for the Third Circuit.

The decision of the Court of Appeals directly conflicts with the decisions of the state courts which have passed on the question involved herein.[1]

While those cases do not establish the law for Illinois, they do constitute a consistent course of authoritative opinion which the Illinois courts could not well disregard, unless the cases could on some substantial ground be distinguished. No attempt has been made, either by the Court of Appeals or by counsel for the State, to point out any distinction between the basic taxing theory in Illinois and in the states that have decided this issue. To rely, as did the lower court, on cases involving religious, educational and charitable corporations, which under all adjudicated cases stand on a different footing, is to evade rather than to establish a correct principle.

The decision here is also at variance with the "tax lien" theory of exemption as enunciated by the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia*, 130 F. (2d) 782.

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1. *City of Harlan* v. *Blair*, 251 Ky. 51, 64 S. W. (2d) 434; *City of Laurel* v. *Weems*, 100 Miss. 335, 50 So. 561; *Foster* v. *City of Duluth*, 120 Minn. 484, 140 N. W. 129; *City of Portland* v. *Multnomah County*, 135 Ore. 469, 296 P. 48; *State* v. *Reed*, 47 Idaho 131, 272 P. 1008; *State* v. *County of Maricopa*, 38 Ariz. 347, 300 P. 175; *Smith* v. *City of Santa Monica*, 162 Cal. 221, 121 P. 920; *State* v. *Galyon*, 154 Okla. 204, 7 P. (2d) 484; *State* v. *Locke*, 29 N. M. 148, 219 P. 790; *Reid* v. *State*, 74 Ind. 252.

Conclusion.

Because of a disregard of what is clearly the law of the land, and also because of the immediate financial importance to the petitioner in these, its early years of public ownership, we respectfully ask that the writ issue and that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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Office - Supreme Court, U.
FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510-511

IN THE MATTER OF
CHICAGO RAILWAYS COMPANY, ET AL.,
DEBTORS.

CHICAGO TRANSIT AUTHORITY,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND JOHN E. SULLIVAN, LIQUIDATING TRUSTEE, ETC.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

The basic question in the case is this: Are the taxes on the property purchased by a municipal corporation abated as of the day of purchase even though already assessed against a private owner—the private owner having become liable for the taxes before the property was purchased by the municipality?

In every State where this question has arisen the taxes have been abated for that portion of the year in which

the property was owned by the municipal corporation—in most cases even where the lien for taxes had already attached; but in every case where, as here, no lien had attached the tax has without exception been abated.

We pointed out that the cases which do not permit the abatement of taxes as to a tax exempt purchaser involved only religious, educational or other private institutions, not municipal corporations. Wherever the point has arisen, a different rule has been applied to municipal corporations and the tax abatement allowed. In our petition we showed that the Court of Appeals failed to follow this rule. While we could not and did not say that the court ignored the express Illinois law—since Illinois has yet to pass on municipal corporation tax abatement—we emphasized that in promulgating its law for Illinois the Court of Appeals made up its own rule which is contrary to that of every other jurisdiction throughout the country where the question has been decided.

What do respondents offer as an answer? They ignore and are unable to answer the point that no lien had attached to the properties here before they were purchased by petitioner, a fact which, in addition to the municipal corporation feature, further distinguishes the Illinois cases cited by respondents. In the absence of a prior lien no court in any jurisdiction has denied abatement of taxes after acquisition of the subject property by a municipality.

Respondents argue that no claim for taxes is made against petitioner. We have made no secret of that fact. But respondents have not denied that the necessary effect of taxing the Trustee for the full year would be to tax petitioner for one-fourth of the year. The proration provision of the Plan of Reorganization, which brings about this taxation effect, was not the voluntary matter which respondents attempt to depict but was a component of the

Plan which petitioner could not avoid. Furthermore, the cases which have abated all or part of a year's taxes as to a purchasing municipality have not been based on whether the liability for taxes was voluntary or involuntary. If the net effect—direct or indirect—of not abating the taxes would be to impose them on the purchasing municipality, abatement was allowed. That is the case here. The net effect of taxing the Trustee would be also to tax petitioner. Respondents have no answer for this.

Respondents cite numerous Illinois cases holding that the tax exemption of a municipal corporation is to be strictly construed. None of those cases are in point because they decide only the question whether or not the municipality had an exemption or whether the properties sought to be taxed were within the municipality's exemption. Neither of those matters are involved here. Admittedly, petitioner has a tax exemption which applies to all its property. (Ill. Rev. Stats. 1947, ch. 120, par. 500, sub-par. 13; *People* v. *Chicago Transit Authority,* 392 Ill. 77, 94.) The question here is when does that exemption take effect? The many cases cited by respondents on strict construction do not purport to pass on this question.

The Illinois statute, which makes the owner on April first liable for the year's taxes, is no answer to the problem of abatement. The purpose of this statute is to fix the year's tax liability to the State as between successive private owners. It does not decide whether there may be an abatement when property is purchased during the year by a tax-exempt municipal corporation.

The other arguments of respondents require little comment. Petitioner is not seeking a retroactive exemption but only exemption for that portion of the year during which it owned the properties—the same type of exemption which has been granted to other municipal corpora-

tions under similar circumstances in every state where the question has been adjudicated.

We shall make no attempt separately to answer the brief of respondent Trustee since the brief of the State of Illinois covers the same ground and more. Furthermore, the Respondent Trustee has no interest whatsoever in the outcome of this case one way or the other. His continued participation in this litigation remains an unsolved mystery.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

Nos. 510 and 511

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PEOPLE OF THE STATE OF ILLINOIS AND JOHN E. SULLIVAN, LIQUIDATING TRUSTEE, ETC.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

TRUSTEE'S ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

Petitioner apparently relies on Rule 38, sub-section 5(b) of this Court in asking this Court to review and reverse the judgment of the Circuit Court of Appeals

for the Seventh Circuit. The Court of Appeals affirmed in substance an order of the United States District Court for the Northern District of Illinois, Eastern Division, striking the objections of Petitioner, the Chicago Transit Authority, a municipal corporation (hereinafter sometimes referred to as C. T. A.). These objections were interposed by the Petitioner-Intervenor to a claim for local personal property taxes filed by the State of Illinois against the component Debtor corporations, making up the Chicago Surface Lines in bankruptcy reorganization under Chapter 10 of the Bankruptcy Act. The objections stricken asserted tax exemption in whole or in part from the taxes assessed against the Debtor corporations (Rec. 78-80).

Petitioner asserts (Pet. p. 3) as the reasons for invoking this Court's supervisory power, that the Court of Appeals decided a question of "public importance," in conflict with the rule announced by the Court of Appeals for the Third Circuit in *U. S.* v. *Certain Parcels of Land, etc.*, 130 F. (2d) 782 (1942); and that the Court of Appeals has failed to follow the local law (Pet. p. 5), meaning the law of Illinois (Pet. p. 3).

QUESTIONS PRESENTED.

1. Did the Court of Appeals fail to follow the Illinois statutes and rule of decision in holding that the tax exemption of the Chicago Transit Authority had no retroactive application to local personal property taxes assessed against the Debtor corporations of the Chicago Surface Lines?

2. Is the decision of the Court of Appeals in conflict with the holding of the Court of Appeals for the Third Circuit in *U. S.* v. *Certain Parcels of Land, etc.*, 130 F. (2d) 782?

STATEMENT OF THE CASE AND POSITION OF THE TRUSTEE.

On August 2, 1948, the State of Illinois filed its claim in the reorganization proceedings of the Chicago Surface Lines, pending in the United States District Court at Chicago, Illinois, for 1947 personal property taxes assessed against the tangible personal property of the component Debtor corporations known as the Chicago Surface Lines (R. 68-70).

The Trustee filed his Answer and Objections* on September 7, 1948, attacking the validity of certain portions of the tax assessments on grounds similar to those involved in the recent case of *In re Chicago Railways Co.-People* v. *Sullivan* (C. A. 7, 1949), 175 F. (2d) 282.

Petitioner, Chicago Transit Authority, which had acquired the properties in question by purchase from the debtors on September 30, 1947, under a Plan providing for the proration of taxes, was permitted to intervene on December 17, 1948, and file its answer and objections to the tax claim asserted against the Chicago Surface Lines. These objections asserted that C. T. A. was tax exempt under Illinois law, that such exemption extended to the properties of which it had taken possession and ownership on September 30, 1947, and that for the balance of that year, if not for the entire year, such tax exemption should operate to defeat the State's claim against the Chicago Surface Lines, which were private as distinguished from municipally-owned public utility corporations, and traditional and chronic taxpayers in Illinois (Rec. 75-80). In

* These objections do not appear in the printed record but are referred to in the C. T. A.'s objections (Rec. 81).

short, the C. T. A. contended that it was being asked to pay taxes from which it was exempt.

After hearing, the District Court ordered the tax exemption objections stricken, filed an opinion construing the Plan, and held that the properties of the Chicago Surface Lines were not tax exempt under the Illinois law when the 1947 taxes were assessed, and that the C. T. A.'s tax exemption did not relate back to defeat any valid claim for taxes against the debtors (R. 85-87).

The Court of Appeals in substance affirmed that judgment in all respects here pertinent.

Pursuant to law, the Trustee filed personal property tax returns of the Debtor corporations' tangible personal property with the Assessor of Cook County on April 1, 1947, at which time the property in question was assessed for the entire year (R. 69). The State's tax claim is excessive and is being resisted by the Trustee on all grounds deemed by him to be sound (Cf. prior year's litigation, *In re Chicago Railways Co.* (C. A. 7, 1949), 175 F. (2d) 282). However, since the Trustee has a responsibility to the State, as well as to all other creditors, to pay amounts which are lawfully due to such creditors, under and pursuant to the Plan, the Trustee has refused to assert any tax exemption, contended for by Petitioner, which finds no support under the statutes and rule of decision of Illinois, and is participating in this aspect of the reorganization proceedings in order to assure that the C. T. A. does not obtain a ruling which would permit it to escape its contractual obligations to the Debtors under the proration provisions of the Plan, as hereinafter discussed.

ARGUMENT.

By use of unsound arguments, inapplicable cases, and doubtful logic, Petitioner has misinterpreted and distorted the questions presented in the cause below. To clarify these questions it is necessary to keep several basic matters in mind:

First. The owners of the property on April 1, 1947 were the Debtor corporations. It is undisputed that the effective date of transfer to the Chicago Transit Authority was September 30, 1947 (Pet. p. 13).

Second. Under Section 28 of the Revenue Act (Smith-Hurd, 1929 Ed., Ill. Rev. Stat., Chap. 120, par. 509), the owner of property on April 1 of any year, is personally liable for the taxes of that year.

Third. The taxable status of property, *i. e.,* whether it is tax exempt or not, is determined by the use to which it is put and its ownership as of April 1. *People* v. *St. Louis,* 291 Ill. 600; *People* v. *Deutche Gemeinde,* 249 Ill. 132, 138; *People* v. *Catholic Bishop,* 311 Ill. 11, 16.

Fourth. In recognition that the Debtors were the owners of the property on April 1, and that the properties were not tax exempt on that date, so that the Debtors were fully liable for the taxes, the plan of reorganization provided for the protection of the Debtors by imposing a contractual liability on the Petitioner as purchaser to adjust the purchase price by paying the Trustee an amount equal to the prorata part of the taxes for the year in which the property was sold (R. 18-19).

Fifth. As a corollary of the preceding proposition, the liability of the Petitioner does not arise from any tax claim made against it. The State has levied no taxes

against the Petitioner. Nobody is asking the Petitioner to pay any taxes. The liability of the Petitioner arises from its contractual obligation to adjust the purchase price by an amount equal to the prorata part of the taxes for the year in which the property was sold.

It was the force of the foregoing considerations that impelled the District Court and the Court of Appeals to decide against the Petitioner. As stated by the Court of Appeals (Rec. 112-113):

> "* * * the legislature has provided that the owner of property on the first day of April in any year shall be liable for the taxes for that year. Thus, on April 1, 1947, the debtors were the owners of the property and *pro forma,* on that date, their liability for the taxes for the year attached; that liability has not been discharged and the debtors are, under the statute, still obligated for all taxes legally assessed for the year 1947. The state has assessed no taxes against the Authority. It has assessed the taxes for 1947 upon the personal property of the debtors only against the debtors, who were the owners on April 1 of that year and who, under the statute, remain liable.
>
> "* * * In Illinois, it matters not what an owner of property may do with it within the year after April 1; he may sell it or give it away, but nothing that he does will lessen his liability for the taxes. * * * but the inchoate statutory liability of the owner to pay the taxes upon personal property exists thenceforth after April 1, without limitation of any character whatsoever. Consequently, when the trustee sold the property to the Authority on September 30, 1947, nothing occurred in that transaction which in anywise relieved the estate from its liability for the taxes, and if any liability accrued against the Authority, it was a contractual liability arising from the contract of the parties. The sale did not affect in any way the state's right to recover the taxes from the owners.
>
> "We think this is the law of Illinois."

It is therefore plain that in order to sustain one of its asserted grounds for certiorari, *i. e.,* that the District Court and the Court of Appeals failed to follow Illinois law, Petitioner has the burden of demonstrating to this Court that the statutes or rule of decision of Illinois provide for a retroactive exemption in favor of one whose property is purchased by a tax exempt municipal corporation after April 1, the date on which the seller has become personally liable for taxes.

We shall now demonstrate that there is no merit in said proposition.

The Court of Appeals Followed the Law of Illinois in Deciding That Petitioner's Tax Exemption Could Not Operate Retroactively in Favor of the Debtors.

The pertinent provisions of the Illinois statutes are as follows:

1. Chapt. 120, Par. 509 of the Illinois Revised Statutes (Smith-Hurd, 1949 Ed.) provides that the owner of property on the first day of April in any year shall be liable for the taxes of that year (Sec. 28 of the Ill. Rev. Act of 1939).

2. The Petitioner is a municipal corporation (Smith-Hurd Ill. Rev. Stat., 1949 Ed., Ch. 111⅔, Par. 303) and is exempt from taxes (Smith-Hurd Ill. Rev. Stat., 1949 Ed., Ch. 120, Par. 500, sub-par. 13).

3. Chapt. 120, Par. 500, sub-par. 13 of the Illinois Revised Statutes provides for the exemption from taxation of all property *belonging* to any municipal corporation created for the owning and operating of a public transportation system (Sec. 19 of the Ill. Revenue Act of 1939).

The uniform and firmly established policy of Illinois is that all grants of tax exemption whether to charitable,

religious, educational or municipal corporations are to be strictly construed, *Turnverein Lincoln* v. *Board of Appeals*, 358 Ill. 135; *People* v. *Trustees of Schools*, 364 Ill. 131. In construing these statutes, it is clear that only the property *belonging* to a specified municipal corporation is tax exempt; and the taxable status of such property is determined as of April 1 for each year. Since it is indisputable that the Debtors owned the property on April 1, 1947, and that the property did not *belong* to C. T. A. until September 30, 1947 (Rec. 77, 86), the tax liability of the Debtors is absolute for the entire year. The Illinois statutes and authorities which impel this conclusion are set forth and discussed in the Court of Appeals' opinion (R. 113-114):

> "* * * in *People* v. *Deutsche Gemeinde*, 249 Ill. 132 at 138, which had to do with real estate taxes, the court said: 'The Revenue Act fixes the first day of April in each year for determining the status of property for taxation * * * although the amount of the taxes has not been determined on the first day of April. The *liability to taxation* and the lien for whatever taxes may be levied for that year are fixed on that day.' (Italics ours.) Though the lien for real estate taxes attaches as of April 1, while that for personal property attaches only after certification to the collector, we think that fact is immaterial. We are dealing with liability for taxes, liabilities to the state, and when the court said that the liability for taxes is fixed on that date, its intent, we think, was clearly such that, from and after April 1, 1947, the debtors were liable for the taxes for the entire year. The language of *People* v. *Catholic Bishop of Chicago*, 311 Ill. 11, 16, cited with reference to exemption, is likewise pertinent in this connection. The court said: 'By the Revenue Act property is required to be assessed "with reference to the ownership, amount, kind and value" on the first day of April. Property

owned on that day which is not exempt is taxable, although it may thereafter be devoted to a purpose which would exempt it from taxation.' "

Petitioner has not pointed to any statute or rule of decision in Illinois giving the Debtor corporations a retroactive benefit of the C. T. A.'s tax exemption. Indeed, in the courts below Petitioner conceded the general rule in Illinois to be that the taxable status of property with respect to exemption is determined by its ownership and the use to which it is put on April 1, and it has never argued either here or below that there is any language in the Illinois statutes granting tax exemption to it or to anyone else which shows a purpose to give such exemption retrospective operation by reducing the liability of the former owner who had become absolutely liable for the taxes on April 1.

Petitioner, however, attempts to escape the clear and necessary implication of this rule by drawing a distinction between tax exemptions granted to a municipal corporation, such as the Petitioner, on the one hand, and tax exemptions granted to the charitable, religious and educational corporations involved in the cases relied on by the Court of Appeals, on the other hand. On the basis of cases cited from other jurisdictions (Pet. p. 14), Petitioner argues that there is a latent public policy in Illinois specially favoring tax exemptions of municipal corporations. Apart from the circumstance that these cases are distinguishable on their facts,* the short and complete an-

* None of the cases cited in the petition, pp. 14-16, arose on facts similar to those of the instant case. Petitioner's cases fall into two classes. In both, the state or its agency has acquired property subject to pre-existing taxes. In one class the property is subsequently sold by the public authorities at a tax sale to private parties in order to enforce collection of the taxes. In the other, generally, such a sale is about to take place. In the first class, the action is between the state or its agency and the private party claiming under the tax deed, the state asserting a para-

swer to Petitioner's argument is that irrespective of any public policy in other states favoring municipal corporations in this regard, there is no such public policy in Illinois.

In Illinois tax exemptions originate exclusively from specific statutory grants by the legislature and as shown *ante* p. 8, tax exemption statutes, including exemptions of municipal corporations, are very strictly construed in Illinois. Further the Illinois Supreme Court has consistently held that no tax exemptions are to be extended to municipal corporations unless expressly and specifically provided

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mount right by virtue of its tax exemption. *City of Laurel* v. *Weems*, 100 Miss. 335, 56 So. 451; *Foster* v. *City of Duluth*, 120 Minn. 484, 140 N. W. 129; *Smith* v. *City of Santa Monica*, 162 Cal. 221, 121 P. 920; *State* v. *Locke*, 29 N. M. 148, 219 P. 790; *Reid* v. *State*, 74 Ind. 252. In the second, the state or its agency sues to enjoin the collection of the tax and sale of the property or for a declaratory judgment that the tax liens thereon are void. *City of Harlan* v. *Blair*, 251 Ky. 51, 64 S. W. (2d) 434; *City of Portland* v. *Multnomah County*, 135 Ore. 469, 296 P. 48; *State* v. *Reed*, 47 Idaho 131, 272 P. 1008; *State* v. *County of Maricopa*, 38 Ariz. 347, 300 P. 175; *State* v. *Gaylon*, 154 Okla. 204, 7 P. (2d) 484.

All that these cases hold is that the acquisition of the property by the state frees *it* (*i.e.* the property) of an existing LIEN for taxes then levied, due and unpaid. None of them holds, as Petitioner contends, that the LIABILITY of the former owner may be reduced by retrospective operation of the municipal corporation's exemptions. Furthermore, in all of them, unlike the present case, a claim for taxes was asserted or a tax lien was attempted to be foreclosed by one state agency against another. The tax agency or the purchasers therefrom did not prevail because of (a) a policy against allowing one state agency to tax another thereby transferring money from "one pocket to the other", and (b) a policy against destroying the character of public property through a tax sale to private parties, thereby depriving the public of its use. Neither of these policies, assuming *arguendo* that they exist in Illinois (and Petitioner is unable to demonstrate that they do) has relevancy to the case at bar, since the state demands no taxes of the Petitioner, nor threatens the sale of its property.

Finally, the public policy governing the tax exemption of municipal corporations is basically different in these cases from the public policy of Illinois. As stated in *Foster* v. *City of Duluth*, 140 N. W. 129 (which is followed and relied on in the *City of*

by statute, *Sanitary District* v. *Hanberg*, 226 Ill. 480, 483; *City of Mattoon* v. *Graham*, 386 Ill. 180, 185; *Sanitary District* v. *Gibbons*, 293 Ill. 519, 521-525. On the precise question of the existence of a special policy favoring exemptions of municipal corporation the Illinois Supreme Court held in the case of *Sanitary District* v. *Martin*, 173 Ill. 243 at p. 247:

> "Whatever may be the law in other States, the language of the constitution of this State plainly implies that the property of municipal corporations is subject to taxation unless there is a law exempting it. (Cita-

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Harlan, Reed, City of Portland, Maricopa County, Gaylon and *Locke* cases), at p. 130:

> "It is technically inaccurate to say that it (the property acquired by the city) was *exempt* from the taxation, for the term 'exemption' rather presupposes a liability removed by some constitutional or statutory provision. The property is 'exempt' not because of any such provision declaring it exempt, but because of its character as public property * * *. The property of the state and of its political subdivisions * * * when used exclusively for public purposes, is not subject to taxation in the absence of constitutional or statutory provisions making public property subject to the tax laws of the state" (Parenthetical material supplied).

See also *City of Laurel* v. *Weems*, 56 So. 451, 452; *Smith* v. *City of Santa Monica*, 121 P. 920, 921.

This is in striking contrast with the public policy of Illinois that all exemptions, including those of municipal corporations, which are not expressly granted by constitution or statutes, are deemed to be withheld. *Sanitary District* v. *Martin*, 173 Ill. 243, 247 (See text *post*).

Moreover, Petitioner recklessly misstates the law when it makes the extravagant pretension that the rule of these cases represents the "law of the land" (Pet. p. 24) "without exception" (Pet. p. 5). There is a respectable body of authority from numerous jurisdictions reaching a contrary result. See, *e.g.*, *United States* v. *Alabama*, 313 U. S. 274; *Triangle Land Co.* v. *City of Detroit*, 170 N. W. 549 (Mich.); *City of Santa Monica* v. *Los Angeles County*, 115 P. 945 (Cal. App.); *State* v. *Salt Lake County*, 85 P. (2d) 851 (Utah); *In re Graley's Estate*, 48 P. (2d) 634 (Wash.); *Childress County* v. *State*, 92 S. W. (2d) 1011 (Tex.); *Madison County* v. *School District No. 2*, 27 N. W. (2d) 172 (Neb.); *Mayor, etc. of Jersey City* v. *Montville Township*, 85 A. 838 (N. J.); *State* v. *Burleigh County*, 212 N. W. 217 (N. D.).

> tion.) * * * the same rule requiring a strict construction of statutes exempting property from taxation belonging to private persons or corporations has been applied to municipal corporations also."

On this question the Court of Appeals said (Rec. 115):

> "It may well be that other courts have found valid distinctions between the exemptions of religious or charitable institutions, and those of municipal corporations under the statutes of their respective jurisdictions. But Illinois has made no such distinction * * *."

Thus, it is clear that the distinction which Petitioner seeks to create based on decisions in other states, specially favoring municipal exemptions, has no validity in Illinois.* It was presumably for that reason that an exemption was granted by the legislature, within the general framework of the Illinois Revenue Act, to property belonging to municipal corporations such as the C. T. A.

Moreover, even in the absence of the express denial of a privileged status to municipal corporations as stated in *Sanitary District* v. *Martin,* 173 Ill. 243, such a result is inevitable upon a proper construction of the Illinois Revenue Act. The subject of tax exemption is covered by thirteen subsections of Sec. 19 of the Illinois Revenue Act (Chapt. 120, Par. 500, Smith-Hurd Ill. Revised Stat. 1949). The

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* *City of Chicago* v. *McCausland,* 379 Ill. 602, 606, cited by Petitioner (Pet. p. 20) as indicating a contrary policy in Illinois is glaringly not in point. Under the Local Improvement Act the value of property there taken was fixed as of the date on which the reports of the commissioners were filed fixing just compensation (379 Ill. at 604). The title acquired by the city related back to the time the commissioners made their report, under the Illinois authorities (379 Ill. 604, 605). Thus title to that property having vested in the City in May 1926, obviously taxes for 1927, 1928 and 1929 assessed while the City was the owner could not be deducted from the award to the owner. In the instant case, Petitioner does not dispute (Pet. p. 13) that title vested in the Authority on September 30, 1947 *after* the taxes were assessed against and became due from the owners, the Debtor corporations, on April 1, 1947.

tax exemption claimed by Petitioner is granted under subsection (13) to "all property * * * belonging to any municipal corporation created for the sole purpose of owning and operating a transportation system for public service". It is treated under the statute in identical fashion with the preceding twelve subsections, including the second, which has been most frequently construed by the courts. This subsection (2) grants exemption to all property used exclusively for religious or school purposes. Subsection (2) and subsection (13) are in *pari materia.* Under traditional principles of statutory construction, no reason exists for a broader scope of exemption of property belonging to municipal corporations under subsection (13) than that afforded under subsection (2). Similar terms of statutes enacted for like purposes should receive like interpretations. *Burnet* v. *Guggenheim,* 288 U. S. 280, 286, 287; *U. S.* v. *Colorado & N. W. R. Co.,* 157 Fed. 321, 330; *People* v. *Day,* 321 Ill. 552, 555.

Parenthetically, it is significant that Petitioner raises no question as to the second aspect of the Court of Appeal's holding, which affirmed the District Court's construction of the proration provisions of the Plan. To eliminate the possibility of misunderstanding this aspect of the opinion relating to the construction of the Plan, the Trustee points out that, under the proration provisions of the Plan, when the amount of 1947 personal property taxes lawfully due is finally determined and paid, the Trustee will have a right under the Plan to require an adjustment of the purchase price in an amount equal to one-fourth of the taxes (since the C. T. A. owned the property for one-fourth of the calendar year 1947). This right is a contract right under the Plan, *In re Alton R. Co.* (C. A. 7), 159 F. (2d) 200, 207, and cases therein cited. There is no question that any contractual liability, such as this obligation, to be undertaken under the Plan, was clearly within the statutory powers of the C. T. A. Smith-Hurd Ill. Rev. Stat., 1949 Ed. Ch. 111⅔,

Par. 301-344, as interpreted by the Illinois Supreme Court in *People* v. *Chicago Transit Authority*, 392 Ill. 77.

The obvious purpose of C. T. A.'s omission of any challenge to the construction of the proration provisions of the Plan is to avoid focusing attention upon the fact that the real objective of the C. T. A. is to escape the consequences of its contractual liability under the Plan.

The District Court construed the proration agreement of Article II-E(1) as follows (R. 86):

> "The Plan of Reorganization in Article I-E(1) (sic) expressly provides for the proration of 'general real and personal property taxes as of the date of transfer'. If this language is to be given its usual and customary meaning, or if in fact it is to have any meaning at all, it must be that the Transit Authority undertook by its acceptance of the Plan that it would reimburse the Trustees for a pro rata share of all property taxes levied or assessed against the Trustees for the year in which the sale and transfer of the property was to be made, having in mind the pertinent provisions of the Illinois statute (Sec. 28 of the Revenue Act). This contractual provision was intended to adjust the purchase price of the property as of the date of transfer."

In approving this finding, the Court of Appeals said (R. 115):

> "As we read the provisions of the plan, we think that this was a correct determination of the issue between the trustee and the Authority * * *."

Nowhere does the Petitioner complain that this interpretation of the Plan was improper. Nowhere does it point, nor can it point, to any statute or rule of decision in Illinois which would permit it to nullify its contractual obligation under the Plan to pay as an additional part of the purchase price an amount equal to its prorata share of the taxes as of the date of transfer. Thus on this aspect

of the case as well as on the first, Petitioner has utterly failed to sustain the burden of demonstrating that the Court of Appeals has failed to follow the law of Illinois.

The Decision of the Court of Appeals Is Not in Conflict With the Rule of the Court of Appeals For the Third Circuit.

The decision of the Third Circuit claimed by the Petitioner to be in conflict with the holding of the Court of Appeals in this case is *U. S.* v. *Certain Parcels of Land, etc.*, 130 F. (2d) 782. A casual examination of the opinion in that case will disclose that it is readily distinguishable. It is not necessary to discuss any other distinctions except to mention the very obvious one that the Third Circuit case involving as it did questions of Pennsylvania taxes was decided according to Pennsylvania law while this case involving questions of Illinois taxes was decided according to the law of Illinois. The point is at once apparent from the following language of the Third Circuit's opinion:

> "the tax liability in such a case is a question of state law * * * (p. 783). They were by the express terms of the statute (53 Pa. St. § 2022) liens on the property from that date forth. * * * The result is supported by the well established doctrine in Pennsylvania * * * (citing numerous decisions of that state) (p. 784)."

There can be no question that the Third Circuit was obligated to and did follow Pennsylvania law for even before *Erie R. Co.* v. *Tomkins*, 304 U. S. 69, federal courts were bound to follow state law in controversies over state taxation which necessarily arise under "the positive statutes of the state and the construction thereof adopted by local tribunals". *Swift* v. *Tyson*, 16 Pet. 1, 18.

Can the decision of this Court of Appeals then be said

to be in conflict with that of the Third Circuit where the latter is based on a body of Pennsylvania statutes and decisions having no currency in Illinois? Petitioner's assertion of such a conflict amounts to an argument that this Court has the function of reconciling the local law of the several states. To state the argument is to reject it.

Parenthetically we note another aspect of Petitioner's argument that passes understanding. On page 5 of its petition appears the following statement:

> "The prorata abatement of taxes when a municipal corporation acquires property after assessment day has never been decided in Illinois."

Having made this dubious assertion, Petitioner concludes:

> "The Court of Appeals has failed to follow the local law—and the writ should be granted." (Pet. p. 5.)

If Petitioner is correct that there is no local rule of decision in Illinois then how can the Court of Appeals be amiss in not following it? This question answers itself.

It should be noted that by the time Petitioner reaches his conclusion, the non-existent "local law" which the Court of Appeals allegedly did not follow, has grown to be "the law of the land" (Pet. p. 24).

Conclusion.

For the reasons above set forth, and more extensively discussed in the opinions of the Court of Appeals and the District Court, this Respondent submits that the Petition for Writ of Certiorari has no merit and should be denied.

Respectfully submitted,

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Of Counsel.

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Summary of Argument.

I.

The "reasons" advanced by petitioner for allowance of the writ are wholly without merit. Petitioner's reasons are without substance and disappear entirely when the facts and applicable law are examined. The decision of the Third Circuit, relied on by petitioner, is a decision involving eminent domain proceedings, not the same matter as here 4-7

II.

It was not until September 30, 1947 that Chicago Transit Authority took title to the personal property which was assessed to debtors as owners on April 1, 1947. This latter date is fixed by Illinois statute as being determinative of liability and ownership for tax

purposes. The owner on the first day of April is liable for the taxes of that year. The Authority did not own the personal property on April 1, 1947. Property which is not exempt on the first day of April is taxable notwithstanding subsequent sale to an exempt buyer. Chicago Transit Authority cannot have the exemption statute, which applies to property, "belonging" to it relate back to April 1, 1947 in order to exempt Debtors' property from taxation 7-10

III.

Statutes exempting property from taxation are strictly construed and the mere fact that the property concerned is municipally owned does not dilute the strength of the settled rule, nor impede its application. Since the personal property in question did not "belong" to the Authority on Assessment day it was not exempt from taxation 11-16

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510, 511

In the Matter of
CHICAGO RAILWAYS COMPANY, et al.,
Debtors.

CHICAGO TRANSIT AUTHORITY,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOHN E. SULLIVAN, Liquidating Trustee, Etc.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT THERE HEARD ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

No tax claim is made or asserted against the Chicago Transit Authority, petitioner here, by the People of the

State of Illinois. The Authority * commenced this course of litigation by intervening (R. 71) in the District Court's reorganization proceedings of the Chicago Surface Lines, Debtors, where the People's tax claim was pending against the Debtors.†

In Illinois the statutory assessment and owner liability Date is April 1. The Chicago Transit Authority did not acquire title to the personal property, upon the assessment of which our tax claim is founded, until September 30, 1947 (R. 104). Due to various voluntary commitments made by the Chicago Transit Authority as purchaser under the Plan of Reorganization, taxes are to be pro-rated between the Trustee and the Chicago Transit Authority (Petition, page 4). Petitioner now enjoys a statutory privilege of exemption from taxes for property belonging to it, and sought to interpose that exemption in order to defeat, in whole or part, our claim against the Debtor-Surface Lines (R. 75-81) and thereby eliminate entirely or reduce the Authority's contractual obligation to the Trustee, under the Plan of Reorganization.

The Question Presented.

Since the General Assembly of Illinois long ago provided that the owner of property on the first day of April in any year shall be liable for the taxes for that year, and the Debtors, here, were owners of the personal property assessed on April 1, 1947, can the People's tax claim made solely against those Debtors, (not against the Chicago

* Hereinafter variously referred to as "Chicago Transit Authority," "the "Authority" and "C.T.A.," all of which denotes the Petitioner before this Court.

† Debtors in proceedings for organization are: Chicago Railways Company, Chicago City Railway Company, Calumet and South Chicago Railway Company, The Southern Street Railway Co., Chicago Western Railway Co., collectively sometimes referred to as the Surface Lines.

Transit Authority) be abated or defeated by acquisition of title, on September 30, 1947, by the Chicago Transit Authority, a tax exempt purchaser of said property under the Plan of Reorganization and pursuant to which Plan the Authority is self-committed to the Trustee to pro-rate taxes?

Opinions of the Courts Below.

The opinion of the District Court of the United States appears in the Transcript of Record on pages 85 to 87. The Court of Appeals' decision, affirming the District Court, is in the record at pages 111 to 116, and reprinted in full in Appendix A, *post*.

ARGUMENT.

Introduction.

We find difficulty in rationalizing Petitioner's "Summary of Argument" (Brief, page 12) since it is there said that "The Court of Appeals has not followed the local law" (Petitioner's brief, page 12) then goes on to state that "the exact question has not been adjudicated in Illinois". Petitioner (Brief, page 12) points out that the decision of the Court of Appeals is based upon Illinois cases which are not in point. It would appear that Petitioner has tortured logic in an attempt to shape its case into a formula calculated to tempt judicial discretion on certiorari matters.

Petitioner cites a collection of cases in the footnote on page 23 of its Brief, saying with reference to those decisions:

> "While those cases *do not establish the law for Illinois,* they do constitute a consistent course of authoritative opinion which the Illinois courts could not well disregard, *unless* the cases could, on some substantial ground, be distinguished." (Italics ours.)

The cases, which "do not establish the law for Illinois," are also cited by the Petitioner in footnote 1 on page 14 of its Brief, and are the authorities discussed in various places in the Authority's brief.

Petitioner's "Summary of Argument" (Brief, page 12) also states that the Court of Appeals' decision "* * * conflicts *with the undoubted inferences** to be drawn from the Illinois cases (where the exact question has not been adjudicated)."

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* Our emphasis.

The Authority also urges that the decision of the Court of Appeals "conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (C.C.A. 3, 1942). That case is not a decision "on the same matter" involved in the case at bar.

I.

Petitioner's "reasons" relied on for allowance of the writ are wholly without merit.

We contend that the reasons created and urged by petitioner for allowance of the writ of certiorari, are without real substance and disappear entirely once the facts and actually applicable law are stated and examined.

Petitioner's first reason (Petition, page 8) hints that a question of public importance may be involved, but concludes that "reason" with a complaint personal and peculiar solely to the Chicago Transit Authority. Moreover, petitioner's statement contained in its reason One (Petition, page 8) that the Court of Appeals' decision's *probable* involvement in the *possible* acquisition and operation of public transportation systems by other municipal corporations in the *future*" carries with it its own index of remoteness, speculation and conjecture. Complete city wide transportation systems are not properties continually bought and sold in the marketplace. Furthermore, tax pro-rating agreements can be drawn so as to avoid such matters as are now vexing the Chicago Transit Authority.

The second (Petition, IV, page 8) reason assigned by petitioner is erroneous. The decision of the Court of Appeals is grounded on the applicable Illinois statute (R. 112; Appendix A) and decisions. We perceive no reason for fol-

lowing the decisions of other states, especially when they are not in point, on the issues before this Court of Appeals.

Petitioner relies upon *United States* v. *Certain Parcels of Land in Philadelphia,* 130 Fed. 782 (C.C.A. 3), as a decision allegedly in conflict between the third and seventh Circuit Courts of Appeal. Comparison of that opinion with one now before this Court fails to disclose conflict "on the same matter." *

That decision in the third circuit is predicated upon the United States' condemnation of land by a Declaration of Taking † whereupon the government deposited the sum agreed upon as the purchase price. The City and School District of Philadelphia claimed real estate taxes assessed the properties, for the year 1941. The owners resisted the tax claim, asserting that the property was exempt from taxation for the year 1941. It having been admitted that taxes for the entries year 1941 were assessed on January 1, 1941, the trial court apportioned the taxes, holding the former owners liable for that fraction of year for January 1 to the date of the taking by the United States, March 10. The opinion of the third circuit reversing the trial court concludes on page 785 (130 F. 2d 782) with the following:

> "In the case at bar, on January 1, 1941 the United States neither had possession of this land nor was it entitled to possession since under the option agreements it was to be entitled to possession within five days of the acceptance of the offers. The offers were not accepted until February 27, 1941, according to the claim of the petitioners. Our conclusion is that even if we assume, as a fact, the landowners' statement that the options were accepted in February, 1941, that on January 1, 1941, the owners were in possession and had the right thereto and a subsequent acceptance of the options by the purchaser *did not free the vendors from*

* Par. 5(b) of Rule 38 of this Honorable Court.

† 40 U. S. C. A. § 258a.

the tax liabilities which accrued on January 1, 1941." (Italics ours)

The "law of the land" mentioned in petitioner's reason numbered Three (Petition, IV, page 8) is not compelling since petitioner's cases offered (Brief pp. 13-17) in support of it do not involve similar factual situations, nor pertinent legal propositions. It is to be remembered that the instant case is not a proceeding to collect or enforce taxes against the Transit Authority. The controlling statute (discussed hereinafter under Point II) in Illinois makes the owner on April 1 of any year liable for taxes, and sales after that date (as here) do not defeat or abate the liability of the owner on April 1. Petitioner has not shown that any case cited by it involves a statute identical to that of Illinois.

II.

Since Chicago Transit Authority was not the owner of Debtors' personal property on April 1, 1947, said property is taxable.

Legislative action fixes the liability date for taxes in the State of Illinois, Section 509 of the Revenue Act of 1939 (Ill. Rev. Stat. 1947,[1] chap. 120, § 28) as follows:

> "The *owner* of property on the first day of April in any year shall be liable for the taxes of that year.[2] The purchasers of property on the first day of April shall be considered as the owner on that day.[3]" (Emphasis supplied.)

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[1] The section cited is unchanged in the 1949 Illinois Revised Statutes.

[2] "Year" is defined in the Illinois Revenue Act of 1949 (Ill. Rev. Stat. 1947 or 1949, chap. 120, par. 482, §19) as:

> "The word 'year', when used in this Act, with reference to taxes of or for a year, shall mean a calendar year, beginning on the first day of January."

[3] The section is the same as section 59 of the Revenue Act of 1872 (L. 1871-72, page 1) except that the month was May instead of "April". This provision making owners, on the first of May, liable for taxes on

The petitioner, Chicago Transit Authority, was *not* the owner of the property, on which the taxes were assessed, on the first day of April, 1947. On page 13 of petitioner's Argument, in support of the Petition filed in this Court, it is stated:

> "(2) The petitioner acquired the properties in question on September 30, 1947 (R. 86)."

Recognition of the controlling feature of the foregoing legislative mandate is demonstrated by the opinion (R. 111 to 116, at pp. 112-113; *See also* Appendix A, *post.*) of the United States Court of Appeals in this case, wherein it said:

> "As we have observed, the legislature has provided that the owner of property on the first day of April in any year shall be liable for the taxes of that year. Thus, on April 1, 1947, the debtors were the owners of the property and *pro forma,* on that date, their liability for the taxes for the year attached; that liability has not been discharged and the debtors are, under the statute, still obligated for all taxes legally assessed for the year 1947. *The state has assessed no taxes against the Authority.** It has assessed the taxes for 1947 upon the personal property of the debtors *only against the debtors,** who were the owners on April 1 of that year and who, under the statute, remain liable."

The argument urged by the Chicago Transit Authority, in this Court, under Point I (Brief, page 13) overlooks the fact we are not asserting any tax claim against it. The cases cited, by the Authority, in the footnote on page 14 (Petitioner's brief) and duplicated in footnote 1 on page 23 of the same brief, are decisions involving tax claims asserted directly against municipal corporations.

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property for that year, was derived from Illinois Laws of 1853, pages 24, 55, § § 53 and 59. Substantially the same provision as the one now in effect appeared in section 8 of the General Revenue Act of 1898 (L. 1898, p. 36).

* Italics supplied.

* Italics supplied.

The People of the State of Illinois filed a tax claim, during proceedings for reorganization[4] of Chicago Railways Company, Chicago City Railway Company and the Calumet & South Chicago Railway Company (R. 68-69) for the *balance* due for 1947 personal property taxes as assessed against the aforesaid corporate debtors (R. 72). The Chicago Transit Authority petitioned (R. 71) to intervene in the matter of the claim, of the People of the State of Illinois, against John E. Sullivan, Trustee for Chicago Railways Company, Chicago City Railway Company, Calumet & South Chicago Railway and The Southern Street Railway Company for 1947 personal property taxes (R. 72).

The statutory exemption which Petitioner seeks to inject into the year 1947 arises under the thirteenth clause of section 500 (Ill. Rev. Stat. 1947, chap. 120, § 19) which is prefaced by, and provided as, follows:

> "All property described in this Section to the extent herein limited, shall be exempt from taxation, that is to say: * * *
>
> (13) All property of every kind *belonging* to *any* municipal corporation created for the sole purpose of owning and operating a transportation system for public service." (Emphasis supplied.)

Since the "Petitioner acquired the properties in question on September 30, 1947,"[5] (par. 3, Petitioner's brief, pages 2 and 13) obviously the properties were not "belonging" to the Authority on assessment day—April 1, 1947.

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[4] The Plan of Reorganization was reviewed by the U. S. Court of Appeals, for the Seventh Circuit, in an opinion dated January 4, 1947. See: *In re Chicago Railways,* 160 F. 2d 59, certiorari denied, April 14, 1947, 331 U. S. 808.

[5] See the Stipulation (R. 104) filed in the U. S. District Court in which it is agreed that the date of transfer of title of the Plan Properties to Chicago Transit Authority was September 30, 1947.
The opinion of the bankruptcy court also specifically noted this date of transfer (R. 85-86).

We observe that the tax exemption is granted to "any municipal corporation" qualifying under the statute and is not the exclusive privilege of the Authority.

This statutory grant of exemption is not a forgiveness of taxes. It merely purports to exempt property from assessment when that property belongs to the Chicago Transit Authority. To give the interpretation contended for by the Chicago Transit Authority would result in retroactive operation of the statute and cut off taxes demanded by the sovereign against which it had very properly planned to operate the government for the year 1947.

"If property taxable on the assessment date is transferred *within the year* to a person, institution or corporation in whose hands it is exempt, the exemption *does not commence until the following assessment date* * * *" (61 Corpus Juris 406, Sec. 417; *People* v. *Ladies of Loretto,* 246 Ill. 403; *Y.M.C.A.* v. *City of New Orleans,* 123 So. 363, 11 La. App. 360). (Italics ours)

"By the Revenue Act property is required to be assessed 'with reference to the ownership, amount, kind and value' on the first day of April. Property *owned on that day* which is *not exempt* is *taxable,* although it may thereafter be devoted to a purpose which would exempt it from taxation." (Emphasis added) (*People* v. *Catholic Bishop of Chicago,* 311 Ill. 11, 16, 142 N.E. 520).

We say that the piece-meal exemption which C.T.A. desiderates to impose upon the balance of taxes owing by Debtors to the respondent is wholly without foundation. Exemptions are not applied on the monthly installment plan.

A.

Clause 13, section 500 of Illinois Revenue Act of 1939 (Ill. Rev. Stat., 1947, ch. 120, sec. 19) does not operate retroactively.

Inquiry might well be made here as to whether the Debtor Surface Lines are exempt from taxation for the year 1947. This, because the residual of petitioner's argument equals that proposition, Petitioner urges, in essence, that its title of September 30, 1947 (pp. 19 *et seq.*) relates back to assessment day and therefore taxes are forgiven for the period April 1, 1947 to the end of that year. Or, says petitioner, there is no tax liability on or after September 30, 1947. Whichever theory Petitioner pursues results in absolution from taxes for the Debtor Surface Lines. That is not the intendment of this exemption statute.

Furthermore, the aforesaid exemption statute does not apply to the Debtor Surface Lines. Not being a municipal corporation they cannot qualify under the precise terms of this exemption statute, hence the course pursued by Chicago Transit Authority would confer an unauthorized tax exemption upon the Debtor Surface Lines.

It is well settled that statutes will be deemed to operate prospectively only and it will not be presumed to have retroactive operation unless the language employed is so clear that it will admit of no other construction (*Friedman* v. *Chicago*, 374 Ill. 545; 30 N.E. 2d 36).

This proposition was stated in *People* v. *Deutsche Gemeinde*, 249 Ill. 132, 137, 94 N.E. 162, as follows:

> "No rule of interpretation is better settled than that no statute will be allowed a retrospective operation unless the will of the General Assembly is declared in terms so plain and positive as to admit for no doubt

that such was the intention, retrospective laws, although they may be valid, are looked upon with disfavor, and an intention that laws shall have such operation will not be supposed unless manifested by the most clear and unequivocal expressions."

The contention urged by the Authority that their title relates back to the assessment date is merely to obtain a retrospective operation of the exemption statute by a subterfuge. "If property is not exempt on the tax day, it is liable to taxation for the fiscal year although it afterwards becomes exempt." (2 Cooley, Taxation, § 712, page 1499, c. 13).

It is a well settled rule of law that exemptions from taxation are subject to strict construction. (*Atlantic Coast Line* v. *Phillips*, 332 U.S. 168, 172-173, 67 S. Ct. 1584, 71 L. Ed. 1977). And it is apparent that any application, here, of the exemption granted by clause 13, section 500 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat., 1947, C. 120, § 19) would result in immunizing the Debtor Surface Lines from 1947 taxes contrary to the constitution of Illinois. (Ill. Const. 1870, § 3, Art. IX.) Until this personal property "belonged" to C.T.A. it was taxable and with that proposition there is no controversy whatever.

To hold that the words of the exemption statute used by the Illinois legislature include the time before C.T.A. took title would be to insert by construction what is not found in the legislative enactment. Such strained application of the Authority's exemption would result in freeing Surface Lines from taxes without warrant in law. We say that the Illinois legislature did not surrender its taxing power over the Debtor Surface Lines.

This record, then, discloses that there exists a gap of time between April 1, 1947, and the date on which title to the personal property here involved, became vested in the Chi-

cago Transit Authority. Appellant seeks to invoke (among other theories) its status as a municipal corporation in a vain attempt to bridge that gap.

After a reading of the Authority's petition and brief, filed in this Court, inquiry might well be made as to just what is troubling the Petitioner. The answer to that is disclosed on page 4 of the petition wherein petitioner explains that it has a contractual undertaking by the terms of the Plan of Reorganization (R. 18) to "indemnify[6] *the Trustee* against the liability for taxes beyond September 30, 1947, the date of transfer of the properties".

But, we say that commitments concerning pro-rating taxes between the Chicago Transit Authority and the Trustee remain a matter between those parties, since the sovereign looks solely to the owner on assessment day. We look to the Trustee, not the Chicago Transit Authority. The bargain between the Authority and the Trustee cannot be expanded so as to strike down our claim filed against the debtor Surface Lines. It was pointed out by the Court of Appeals (Opinion, R. 114; Appendix A) that the Authority * * * having acquired its title to the property subsequently to the date when the liability for taxes attached, is in no position to assert its exemption to defeat any portion of the assessment for 1947".

Our position is well stated by the Court of Appeals (Opinion R. 112; Appendix A) as follows:

> "Both the state and the trustee for the debtors insist that, inasmuch as no claim for taxes is asserted against the Authority, the only liability to which it is subjected is its contractual obligation under the plan whereby it agreed to include in its purchase price its pro rata share of the taxes."

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[6] Article II-E (R. 18, *et seq.*) provides for the proration of taxes as is customary between buyers and sellers of property.

Stripping the petition and brief submitted by the Authority of legalistic vestments reveals that the Chicago Transit Authority is attempting to disavow its commitments to the Trustee under the Plan of Reorganization. With this desideratum we have no concern except insofar as it affects our tax claim filed and asserted against the Trustee and the Debtor Surface Lines.

We point out that none of the cases cited by Petitioner involve factual situations where a municipal corporate buyer committed itself to a contract or Plan of Reorganization and then sought to escape its contractual liability by asserting a tax exemption not operative on assessment day.

III.

Statutes exempting property from taxation are to be strictly construed.

The record before this Court conclusively establishes that the personal property involved in the tax claim did not "belong" to the Appellant at the time when the assessment was made.

Petitioner, in substance, seeks to attempt a psychological accretion to "its" exemption statute by the novel and dubious theory of relating its September 30, 1947 title back to April 1, 1947. We say that this attempt to impress the exemption on our 1947 tax claim entails a ruthless interpretation of the exemption provision urged by Petitioner.

Speaking of exemption statutes, which make the ownership of the property the test as to its exemption, Professor Cooley (II Cooley, Taxation, Sec. 676, page 1418) states that: In construing such statutes, it has been held that "belonging' means 'to be the property of' * * *."

Where property is referred to in an exemption clause as "belonging to" a designated person or corporation rather than to a place, the words "belonging to" have been construed to denote title or ownership. (*People* v. *Lake Forest Univ.*, 367 Ill. 103, 10 N.E. 2d 667). The Authority concedes it did not acquire legal title or possession of the assessed properties until September 30, 1947.

Petitioner draws an analogy between its theory and the doctrine enunciated in condemnation proceedings, citing *City of Chicago* v. *McCausland*, 379 Ill. 602 in support. But C.T.A. overlooks the fact that eminent domain proceedings are purely statutory and that in the *McCausland* case, *supra*, as in all condemnation proceedings, they are commenced by a petition to condemn being filed against specific defendants which fixes and establishes particular rights and duties. Litigation has actually begun by which the sovereign is to take the property. As was said in the *McCausland* case, *supra*, at page 605: "It is also said that in law land is regarded *as being taken at the time the petition* for eminent domain *is filed.*" (Italics ours). But that is not the situation here. The order of sale by the bankruptcy court did not establish rights in any prospective bidder. The personal property in the case at bar was not "taken" until September 30, 1947 when C.T.A. actually got title. C.T.A.'s title cannot relate back since there was nothing for it to relate back to.

It was clearly stated in *People* v. *City of Quincy*, 395 Ill. 190, 192-3, 69 N.E. 2d 892, that:

> "Section 3 of article IX of the Constitution provides that the property of municipal corporations 'may be exempted from taxation, but such exemption shall be only by general law'. This section does not of itself exempt any property from taxation. It merely gives authority to the legislature to grant such exemption within the limitations prescribed. (*People ex rel. Gill* v.

> *Trustees,* 364 Ill. 131). This constitutional provision, and the statute in it, *are to be strictly construed.* Unless the property clearly falls within the class which may be exempted, it is subject to taxation * * * (citing) * * *" (Emphasis ours).

In *City of Mattoon* v. *Graham,* 386 Ill. 180, 185, 53 N.E. 2d 955, the court said:

> "Because property is owned by a municipal corporation, it does *not* necessarily follow that such property is exempt from taxation. (*People ex rel. Gill* v. *Trustees of Schools,* 364 Ill. 131; *Sanitary District* v. *Hanberg,* 226 Ill. 480). As observed in the case last cited: 'The provision of the constitution plainly implies that property so owned *is subject to taxation* unless there is some law exempting it.' The solution of the question whether a particular parcel of property is exempt from taxation requires a consideration of each factual situation."

Conclusion.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Appendix A.

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Opinion of the Court of Appeals filed herein on November 8, 1949.

Before KERNER, FINNEGAN and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Pursuant to an order of the District Court entered in the course of reorganization of the Chicago Surface Lines, Debtors, requiring the State of Illinois to file any and all claims for taxes against the property of the debtors, in behalf of itself and its authorized agents, within a certain time or be forever barred, the state, on August 2, 1948, filed its claim for taxes assessed against the estate's personal property for the year 1947 in the amount of $1,620,695.85, less $540,231.95 previously paid. The Chicago Transit Authority, who acquired the property on September 30, 1947, pursuant to a sale ordered

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and approved by the court, filed its answer and objections, asserting that, inasmuch as it had purchased the property during the year for which the taxes were assessed, and, inasmuch as, under the statute and decisions of the Supreme Court of Illinois, it was exempt from taxation, the court should find that the state's claim for that portion of the taxes for the year represented by the period between September 30, 1947 and December 31, 1947 should be denied.

The state's motion to strike the answer and objections of the Authority was granted. The court held that, under Section 509 of the Revenue Act, (Chapter 120, par. 28, Ill. Rev. St.), the owner of the property on April 1, was liable for the taxes of that year; that, on that date, the property taxed was owned by debtors; that title thereto passed to the Authority on September 30, 1947; that, notwithstanding the latter's undisputed right to exemp-

tion from taxation, since it was not the owner on April 1, no exemption under the Illinois law could ever come into existence, in so far as this property is concerned, for the year 1947. It concluded, further, that, under the terms of the plan of reorganization, the Authority undertook, by its acceptance of the plan, to reimburse the trustees for the pro rata share of all property taxes legally levied or assessed against the debtors' property for the year in which the property was sold, that is, 1947, and that this contractual provision was intended to adjust the purchase price as of the date of transfer.

Upon appeal the Authority urges that the court erred in allowing the motion to strike and should have held that the claim for that portion of the taxes for the year 1947 represented by the last four months of that year, subsequent to the acquisition of title by the Authority, should have been denied, because of the Authority's statutory exemption. It contends also that the court erred in holding that the tax proration provision of the plan was intended to burden the Authority with any portion of the year's taxes. Both the state and the trustee for the debtors insist that, in asmuch as no claim for taxes is asserted against the Authority, the only liability to which it is subjected is its contractual obligation under the plan whereby it agreed to include in its purchase price its pro rata share of the taxes.

As we have observed, the legislature has provided that the owner of property on the first day of April in any

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year shall be liable for the taxes for that year. Thus, on April 1, 1947, the debtors were the owners of the property and *pro forma,* on that date, their liability for the taxes for the year attached; that liability has not been discharged and the debtors are, under the statute, still obligated for all taxes legally assessed for the year 1947. The state has assessed no taxes against the Authority. It has assessed the taxes for 1947 upon the personal property of the debtors only against the debtors, who were the owners on April 1 of that year and who, under the statute, remain liable.

We think this simple statement of facts should dispose of the issues involved here. In Illinois, it matters not what

an owner of property may do with it within the year after April 1; he may sell it or give it away, but nothing that he does will lessen his liability for the taxes. True, under the statute, no lien upon personal property to secure the taxes thereon attaches until their amount shall have been determined and certified to the collector, but the inchoate statutory liability of the owner to pay the taxes upon personal property exists thenceforth after April 1, without limitation of any character whatsoever. Consequently, when the trustee sold the property to the Authority on September 30, 1947, nothing occurred in that transaction which in anywise relieved the estate from its liability for the taxes, and if any liability accrued against the Authority, it was a contractual liability arising from the contract of the partes. The sale did not affect in any way the state's right to recover the taxes from the owners.

We think this is the law of Illinois. Thus, in *People* v. *Deutsche Gemeinde*, 249 Ill. 132 at 138, which had to do with real estate taxes, the court said: "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation * * * although the amount of the taxes has not been determined on the first day of April. The *liability to taxation* and the lien for whatever taxes may be levied for that year are fixed on that day." (Italics ours.) Though the lien for real estate taxes attaches as of April 1, while that for personal property attaches only after certification to the collector, we think that fact is immaterial. We are dealing with liabilities for taxes, liabilities to the state, and when the court said that the liability for taxes is fixed on that date, its intent, we think, was clearly such that, from and after April 1, 1947, the debtors were liable for the taxes for the

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entire year. The language of *People* v. *Catholic Bishop of Chicago*, 311 Ill. 11, 16, cited with reference to exemption, is likewise pertinent in this connection. The court said: "By the Revenue Act property is required to be assessed 'with reference to the ownership, amount, kind and value' on the first day of April. Property owned on that day which is not exempt is taxable, although it may thereafter be devoted to a purpose which would exempt it from taxation."

In *Biggins* v. *The People of the State of Illinois,* 96 Ill. 381, in an action to enforce a tax liability against a purchaser of property subsequent to May 1, the then date of assessment in Illinois, the court said: "As to the matter of a personal action, to recover unpaid taxes, the 59th section of the Revenue act provides that 'the owner of property on the first day of May in any year, shall be liable for the taxes of that year. The purchaser of property on the first day of May shall be considered as the owner on that day.' This, by implication, excludes the idea of a personal action against any person other than such owner. * * * the declaration should state the year for which the supposed tax upon the property was levied, and should also state the defendant was the owner of the property on the first day of May, in that year. *The People* v. *Winkleman,* 95 Ill. 412."

We conclude that the court rightfully held that the claim of the state against the debtors and their trustee for the taxes legally assessed for 1947 was not affected by the sale thereafter made during the year to the Authority and that the latter's urgent plea that it was exempt from taxation has nothing to do with the taxes for 1947, so far as the liabilities of the debtors are concerned. Inasmuch as there is no assessment for the year 1947 against property which was then exempt, the Authority's contention that the court should have given consideration to its exemption is wholly beyond the point. If it has any remedy as against the former owner of the property with regard to the taxes representing the period after its purchase, it must arise solely by way of contractual liability.

Even were it the fact that the state was asserting a claim against the Authority, we think, in view of what we have said, the latter, having acquired its title to the property subsequently to the date when the liability for taxes attached, is in no position to assert its exemption to defeat any portion of the assessment for 1947. The language of

People v. *Catholic Bishop of Chicago, supra; People* v. *Deutsche Gemeinde, supra,* and *People* v. *St. Francis Academy,* 233 Ill. 26, seems conclusive in that respect. It may well be that other courts have found a valid distinction between the exemptions of religious or charitable in-

stitutions and those of municipal corporations under the statutes of their respective jurisdictions. But Illinois has made no such distinction; and the language of its statutes and of its decisions is such, we think, as to deny any such distinction in this jurisdiction.

The Bankruptcy Court, being a court of equity and having jurisdiction of the *rem*, had jurisdiction to determine the rights and interests of all parties in interest and, therefore, the power to hear and determine whether there was involved any right of the Authority as against the trustee. The court disposed of that matter by saying: "The Plan of Reorganization in Article I-E (1) expressly provides for the proration of 'general real and personal property taxes as of the date of transfer.' If this language is to be given its usual and customary meaning, or if in fact it is to have any meaning at all, it must be that the Transit Authority undertook by its acceptance of the Plan that it would reimburse the Trustee for a pro rata share of all property taxes legally levied or assessed against the Trustee for the year in which the sale and transfer of the property was to be made, having in mind the pertinent provisions of the Illinois statute. Section 28 of the Revenue Act. This contractual provision was intended to adjust the purchase price of the property as of the date of transfer." As we read the provisions of the plan, we think that this was a correct determination of the issue between the trustee and the Authority and that, therefore, its prayer for relief was rightfully denied.

In Part III of its answer, however, the Authority prayed, in the alternative, that, if it should not be allowed the statutory exemption or relieved of liability for one-fourth of the taxes on the grounds previously urged, then that it be permitted to adopt and join in the answer and objections of the trustee to the claim of the state. In view of the fact that the final determination of whether there are taxes legally due from the estate, upon the personal property owned by the debtors on April 1, 1947, will materially affect the Authority's rights, for, under the plan, it is bound to pay its pro rata share, it is such a party in interest as should have the right to resist, upon the merits,

the legal validity of the personal property taxes for 1947 assessed against the debtors. To deny it that right would be to subject its property, acquired September 30, 1947, to a lien without a chance to be heard. It should have been given the right to be heard in defense of the validity of the taxes assessed against the trustee. We think the District Court should have permitted this portion of the Authority's pleading to stand. Therefore, the order sustaining the motion to strike is disapproved as to this part of the Authority's answer and objections. In all other respects it is affirmed.